BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
HANS J. BOTHKE)

Appearances:

For Appellant: Hans J. Bothke, in pro. per.

For Respondent: James Philbin
Supervising Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Hans J. Bothke against a proposed assessment of additional personal income tax in the amount of $1,300.51 for the year 1976, and against proposed assessments of additional personal income tax and penalties in the respective total amounts of $1,994.59 and $1,224.17 for the year 1977. Prior to the hearing on these appeals, respondent agreed to reduce the penalties for 1977 to a total of $1,038.39.

Appellant is an engineer employed as a piping supervisor by Fluor Engineers and Constructors. For the year 1976, appellant filed a California personal income tax return reporting an adjusted gross income of $28,445.33, a tax liability of zero, and a refund of all tax withheld in the amount of $934.90. In computing his tax, appellant deducted "expenditures" of $17,814.25 from his reported income and then discounted the remaining $10,631.08 to reflect his opinion of the "fair market value" of Federal Reserve notes. Upon reviewing this return, respondent disallowedsome of appellant's claimed deductions and rejected his attempt to account for Federal Reserve notes at less than their face value. This action resulted in the deficiency assessment of $1,300.51 which appellant now contests.

The facts, issues and arguments relating to this deficiency are the same as those reported at length in the U.S. Tax Court's decision on appellant's 1976 federal income tax liability. (See Hans Bothke, ¶ 80,001 P-H Memo. T.C. (1980).) It is unnecessary, therefore, to rehash them here. Suffice it to say that the Tax Court's decision is highly persuasive of the result we should reach, since the federal and state statutes involved in this case are identical. (Appeal of Dorothy C. Thorpe Glass Mfg. Corp., Cal. St. Bd. of Equal., Sept. 17, 1973.) After comparing respondent's determination with the Tax Court's, it appears that respondent has already allowed all of the deductions the Tax Court allowed, except perhaps for the $148.00 in advertising expenses attributable to appellant's efforts to market a health food recipe he developed. The 1976 assessment will be modified to reflect this expense, and as so modified will be sustained in accordance with the Tax Court's decision. Appellant has presented no evidence suggesting that the Tax Court's decision was incorrect in any respect.

For the year 1977 appellant filed a Form 540 devoid of financial information regarding his tax liability. Appellant objected to providing this information on numerous constitutional grounds. In the absence of a valid return, respondent computed appellant's tax liability from available information returns and assessed a deficiency which included penalties for delinquent filing, failure to file after notice and demand, negligence, and underpayment of estimated tax. Information appellant submitted in protest to this assessment revealed additional income and caused respondent to propose a second assessment, including penalties. However, since it was determined that some state income tax was withheld from

appellant's wages in 1977, respondent agreed, prior to the hearing, to withdraw the estimated tax penalty and to reduce the delinquent filing penalty.

Subsequent to the hearing on this matter, appellant finally submitted sufficient information upon which to determine his liability for 1977. After analyzing this material, respondent has agreed to make further reductions in its assessments of tax and penalties. We, in turn, have reviewed the evidence and computations submitted by both parties, and we find that respondent's figures are correct except for its failure to allow a deduction for property taxes in the amount of $833.10. We have also considered appellant's allegations that various of his constitutional rights have been violated, and we reject those allegations as completely without merit. Similarly, like the Tax Court in Hans Bothke, supra, we reject again the notion that Federal Reserve notes may be reported as income at less than their face value. (See Appeal of Robert S. Means, Cal. St. Bd. of Equal., Jan. 9, 1979.)

For the reasons stated above, respondent's determination of appellant's 1977 liability will be modified only to reflect respondent's concessions and the allowance of the deduction for property taxes.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Hans J. Bothke against a proposed assessment of additional personal income tax in the amount of $1,300.51 for the year 1976, be and the same is hereby modified to allow an advertising expense deduction of $148.00; and that the action of the Franchise Tax Board on the protests of Hans Bothke against proposed assessments of additional personal income tax and penalties in the respective total amounts of $1,994.59 and $1,224.17 for the year 1977, be and the same is hereby modified in accordance with respondent's concessions'and to reflect a deduction for property taxes in the amount of $833.10. In all other respects,, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 21st day of May, 1980, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member